

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JUAN E CANTU, JR,

Plaintiff,

VS.

NUECES COUNTY JAIL STAFF, *et al*,

Defendants.

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CIVIL ACTION NO. C-07-444

NOTICE TO PLAINTIFF


Undersigned notes that defendant Martin Guajardo was personally served with summons, a copy of the complaint, and a copy of the order for service of process on September 17, 2008 (D.E. 55, 58). Defendant Guajardo has not filed an answer or otherwise defended this suit. Plaintiff has not moved for entry of default.

An Assistant County Attorney for Nueces County, representing defendant Guajardo in his official capacity only, has moved for entry of summary judgment (D.E. 66, 70). The summary judgment evidence provided appears to be sufficient to determine the issue of qualified immunity as to defendant Guajardo in his individual capacity. Plaintiff failed to file any response to the motion, and it appears that plaintiff has abandoned any interest in prosecuting this lawsuit. Fed. R. Civ. P. 41(b).

Accordingly, plaintiff is notified that the issue of qualified immunity as to defendant Guajardo in his individual capacity will be considered along with defendant Guajardo's motion for summary judgment in his official capacity. Fed. R. Civ. P. 56(c); *See also, NL Industries, Inc. v. GHR Energy Corp.*, 940 F.2d 957, 965 (5th Cir. 1991)

(with ten days notice to all parties, court may enter summary judgment in favor of a party not requesting it). Plaintiff may file any summary judgment evidence or argument on this issue or any issue raised in the summary judgment motions within ten days of the date of this order, or no later than **Tuesday, March 31, 2009**. Failure to file any summary judgment evidence or argument by the deadline will be considered as a representation by plaintiff that he no longer wishes to prosecute this lawsuit. Fed. R. Civ. P. 41(b).

ORDERED this 17th day of March, 2009.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE